PUBLIC PROSECUTOR

v.

WONG KIEW MEOW

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[CASE NO. E 93-25-87]
7 DECEMBER 1988

CRIMINAL PROCEDURE: *Trafficking - Ambush by police - The accused detained on the landing of the first floor of a 3 storeyed building - Car keys and cash seized from the accused - Heroin found in the glove compartment of car driven by the accused - Denial by accused of knowledge of drugs - Presumptions under s. 37(d) of the Dangerous Drugs Act - Whether police used 2 other accused arrested earlier to trap the accused.*

The accused was detained in an ambush at the landing of the first floor of a three-storeyed building. A key holder containing 3 keys and a large amount of cash was seized from the accused.

One of the keys used to unlock the car which the accused had parked outside the 3 storeyed building. The drugs were found in the glove compartment of the car.

The prosecution's case was directed to show that the accused was aware of the existence of the drugs, while the defence was that the accused was not aware of the drugs found in the car and that the case of trafficking in the drugs had been framed against him by the police who were assisted by a Chinese man Foo and a Chinese woman Ah Quin both of whom had been arrested the previous night.

The accused story was that the cash found on him was the proceeds of his winnings from 4 digit bills placed by him.

Held:

[1] It seems clear that there was a link between the arrest of Foo and Ah Quin in the one hand and the operation where the accused was arrested.

[2] On the assessment of the totality of the evidence adduced in this case it is probable that the accused was an innocent victim of a police trap which misfired.

[3] The presumptions of possession and knowledge of, and the trafficking in, the said heroin, have, on a balance of probabilities been rebutted.

[4] The accused is therefore acquitted and discharged.

[5] Further the Court ordered the forfeiture of the heroin and all their containers and wrappings, cash of RM1,000, the car and car key. The RM5,000 found was to be returned to the accused.

[Accused acquitted & discharged.]

For the public prosecutor - Zaini bin Abdul Rahman, DPP
For the accused - Manjeet Singh Dhillon; M/s. Lawrence, Dhillon & Associates

JUDGMENT

KC Vohrah J:

The accused was charged as follows:

> That you on 18 January 1986, at about 11.20 a.m., at Jalan Baba, Off Jalan Pudu, Kuala Lumpur in the Federal territory, did traffic in dangerous drugs, to wit two packets of heroin weighing a total of 112.63 grammes, and that you have thereby committed an offence under s. 39(B)(1)(a) of Dangerous Drugs Act 1952 and punishable under s. 39B(2) of the same Act as amended by Act 533/83.

It was the prosecution's case that 3 police personnel who had waited for a certain type of car to arrive observed the accused arriving alone in a similar car. The accused, after locking the car, then went to a 3 storey building and up the stairs of address No. 30, Jalan Baba. The 3 police personnel followed him. At the landing on the first floor the accused was arrested by 2 other police personnel who were lying in ambush. One of them seized a key holder holding 3 keys from the right hand of the accused and RM5,000 from his right trousers's pocket. One of the keys was used to unlock the car that the accused had parked at Jalan Baba. In the glove compartment of the car were discovered 2 plastic bags, one containing cash of RM1,000 and the other containing 2 newspaper wrappers holding substances suspected to be heroin. The substances in the two newspaper packages were analysed and found to contain, according to the Chemist report, 112.63 grammes of heroin.

I now come to the evidence.

To Jalan Baba on 18 January 1986 at about 11 a.m. went a police party from the Kuala Lumpur Anti Narcotics Division led by ASP (then Inspector) Mohd. Yusof (PW2). The party comprised 4 others, Inspector Yusof Tahir (PW3), Inspector Roslan, detective Sergeant Paiman (PW4) and Detective Corporal Zaharin (PW5).

Inspector Yusof Tahir said he, Inspector Roslan and Detective Sergeant Paiman stationed themselves at various points along Jalan Baba to make observation.

According to Inspector Yusof Tahir, at 11.20 a.m. he saw a car pass along Jalan Baba. He then saw a male Chinese who was alone; that man alighted from the car and locked his car. The man then walked towards a building at Jalan Baba. Yusof Tahir trailed him and saw him go up the staircase of address No. 30. He followed him up and he found that the man, the accused, had been detained in front of a door on the first floor by ASP Mohd. Yusof and Corporal Zaharin.

Sergeant Paiman substantially corroborated the evidence of Inspector Yusof Tahir. Additionally, he stated that he was instructed by Inspector Mohd. Yusof to keep observation on a male Chinese who would be arriving in a Datsun, grey in colour. He recounted that after the man had locked his car and walked to the entrance of No. 30, he together with Inspector Yusof Tahir followed the man and on arrival at the first floor he saw that the man, the accused, had been detained.

I now turn to the evidence relating to the events which took place at address No. 30.

ASP Mohd. Yusof stated that he and Corporal Zaharin climbed up the stairs of address No. 30, Jalan Baba to lay an ambush, placing themselves "on the landing between the first flight of stairs and the second flight of stairs". According to him at about 11.20 a.m. a male Chinese, whistling, climbed up the stairs. When the man arrived at the landing ASP Mohd. Yusof and

Zaharin "stopped him and identified themselves as the police". He said he asked the man what he was doing there and who he was looking for and he observed that the man "appeared frightened and his face was pale". The man, the accused, kept quiet, according to him.

ASP Mohd. Yusof also stated that during the questioning Inspector Yusof Tahir, Inspector Roslan and Sergeant Paiman came up the staircase towards the three of them.

Corporal Zaharin, who was with Inspector Yusof throughout, gave evidence of substantially similar effect.

I now come to the evidence relating to the seizure of a key holder and cash from the accused and the discovery of heroin in the car that the accused was seen to park earlier.

ASP Mohd. Yusof stated that then Inspector Yusof Tahir whispered to him that the accused was the man who had arrived in a car and that the car was parked at Jalan Baba. ASP Mohd. Yusof said that when he "stopped" the accused he observed that the man was trying to put something which he had observed earlier in his right hand into his trousers' pocket; he straightaway held his right hand and pulled it out from the trousers' pocket and found a key holder (P9) with 3 keys (P9A) in the hand. Inspector Yusof Tahir substantially corroborated the evidence of ASP Yusof on this aspect of the evidence. ASP Yusof then searched the accused and recovered RM5000 cash (P7A) (in notes of large denomination of RM50 and RM100) in his right trousers' pocket. He then instructed Corporal Zaharin to handcuff both his hands and he then told the accused to go down the stairs; the accused hesitated and ASP Mohd. Yusof pushed him along to the ground floor. They located the car which Inspector Yusof Tahir had told him about. He observed that all the doors of the car were locked and he unlocked the front passenger door and then unlocked the rest of the doors.

Then, according to ASP Mohd. Yusof, he put the accused in the back seat of the car with Detective Corporal Zaharin and Detective sergeant Paiman while Inspector Yusof Tahir sat in the driver's seat. ASP Mohd. Yusof then recovered from the glove compartment of the car 2 plastic bags, one of which contained cash of RM1,000 (P8A) (in notes of RM1, RM5 and RM10 denomination) and the other which contained 2 newspaper packages (P4 and P5) each containing a plastic packet (P4B and P5B) of substances suspected to be heroin. Inspector Yusof Tahir substantially corroborated ASP Yusof in respect of the search and recovery of the things in the car. He also said the glove compartment of the car was not locked.

The car with the accused in it was driven to Police Headquarters, Jalan Hang Tuah and there ASP Mohd. Noor made a further search of the car but no other drugs were found in it.

The car was produced (P12) and the Court inspected the car in the presence of defence Counsel and the DPP. The car was in a dilapidated condition. At the request of defence Counsel and my agreement all things in the glove compartment of the car were removed and they were produced in Court. There were 2 RM5/0 Genting Highland chip (D14A & B) and a stack of calling cards.

I now come to the plastic packets of suspected heroin seized from the glove compartment of the accused's car. I was satisfied that they were properly sealed by the IO of the case, Inspector Saliman (PW6), and sent to the government chemist for analysis. The chemist report which was served on the accused by PW6 showed that the contents of the 2 packets contained 112.62 grammes of heroin.

The cross-examination of prosecution witnesses was directed to show the accused was not aware of the drugs and cash found in the car and that the case of trafficking in the drugs had been framed against him; that a Chinese man, Foo Fu Hin, and a Chinese woman, Ng Siew Keat, both of whom had been arrested the previous night at Gombak by a police team led by ASP Mohd. Yusof had been used to set up a case against him; that Foo was made by the police to place a telephone call to number 9854506 in a shop, Khong Guan after which both Fu and Ng were then brought to the operation area at Jalan Baba in a car, a Ford TX, which had been seized when the two were arrested; and that they were placed in the first floor flat with some police officers opposite the landing where the accused was arrested.

While ASP Mohd. Yusof, Inspector Yusof Tahir, Paiman and Zaharin admitted the arrest of Foo and Ng and the seizure of the Ford TX, ASP Mohd. Yusof denied that Foo made the alleged calls while Inspector Yusof Tahir said he did not know about the calls. All 4 denied that the two Chinese were brought to Jalan Baba and placed in the first floor flat as part of the operation against the accused. Inspector Yusof Tahir also denied that Moktar, who was not called to give evidence, drove the Ford TX to Jalan Baba.

ASP Mohd. Yusof also denied that when the accused got on to the first landing he beckoned to him from the second landing and that the accused went up a few steps towards him and that as he was doing so one of ASP Mohd. Yusof's men walked past him. Zaharin also denied that he and Mohd. Yusof were at the second landing.

ASP Mohd. Yusof and Inspector Yusof Tahir also denied the former handed the accused's key to the latter whereupon the latter went down to the car.

Zaharin's evidence on one aspect of the ambush was confusing. On the one hand under cross-examination he said he saw the interior of the flat and when asked who entered the flat with him he said he was together with ASP Mohd. Yusof. He also said the windows of the flat faced the back not towards Jalan Baba and that he could not remember if there was an airwell in the flat. On the other hand under re-examination he said he did not enter the flat.

Inspector Saliman (PW6), the IO of the case, agreed with defence Counsel that in the course of investigations he visited the accused in Pudu Jail to ask him a question regarding the existence of a woman in the flat but he denied he showed a photograph of the woman to the accused. Under re-examination he said that his purpose of going to visit the accused was to trace the name of the accused's girl friend though he failed to establish her name or her address. Under cross-examination he also denied that he asked the accused the name of a person who got down from the accused's car and that the accused gave him the name as Ah Wah and that the accused also told him to check with one Ah Chai at a coffee shop called Khong Guan whose telephone number the police knew.

At the close of the prosecution's case I called upon the accused to make his defence on the charge. The prosecution had established primary facts which showed that he alone alighted from a car which he had driven to Jalan Baba shortly before his arrest and that he locked his car before walking away; and in the car which was subsequently unlocked by a police officer who used a key found in the accused's possession, the heroin was found in the glove compartment of the car. These facts indicated on a *prima facie* basis that he had, at the least, control and custody of the drugs; and possession of the drugs his knowledge of the nature of the heroin and as indeed his trafficking in the 112.63 grammes of heroin can be presumed under the provisions of paras. (d) and (da) (i) of s. 37 of the Dangerous Drugs Act 1950. I therefore called upon him to make his defence on the charge.

Defence

The accused elected to give evidence on oath and he called 8 witnesses.

He denied knowledge of the heroin and cash found in the glove compartment of his car parked at Jalan Baba.

He said that on that day he had dropped one Ah Wah along Jalan Nyonya, a street close to Jalan Baba. He had met Ah Wah in a coffee shop that morning. After receiving a telephone call Ah Wah borrowed his car. On Ah Wah's return the accused got into the driver's seat intending to drive with Ah Wah to Genting Highlands to gamble at the casino but Ah Wah invited him to have lunch with Ah Wah's girl friend, Ah Quin. And Ah Wah requested him to go to Jalan Nyonya where he had a room for him to get some money for his gambling at the casino. When he dropped Ah Wah at Jalan Nyonya Ah Wah told him he would order lunch and he requested the accused to fetch Ah Quin. The accused then drove over to Jalan Baba and then went to the first floor landing where Ah Quin's flat was located and there he was arrested by the police. He said that after his arrest a police officer took his car key and went down. Then he was brought down and his car was searched.

In his evidence he said he was an itinerant "pasar malam" hawker selling candies, groundnuts and preserved fruits every night except Saturday night. And that from Monday to Friday in the mornings he would operate his business in front of Khong Guan coffee shop at Taman Maluri. He did not do business on Saturday night as that was his off day and his brother Wong Siew Sing (DW2) (who corroborated him) would stand in for him. He also said he was involved in illegally transporting passengers to Genting Highlands during the day, Saturdays and Sundays. He said that someone at the taxi stand in Imbi Road would phone him at the coffee shop to pick up passengers for Genting Highlands. He claimed that a stack of calling cards advertising a "tour agency" were his and substantiated what he said about his transport business. He was not challenged on the cards but it was put to him that he did not transport passengers to Genting Highlands; he denied it. On the other hand it was suggested to him that the 2 chips from the casino at Genting Highlands found in his car, were given as tips to him by his passengers. From my point of view I do not have any difficulty in accepting his evidence about the two businesses that he had and how he operated them.

He also said he gambled at the Genting Highlands' casino and he said the two Genting Highlands chips (D14A and B) recovered from his car were his. Again I have no difficulty in accepting his evidence.

He claimed that he betted on "4 digits" and that he played majong. He produced two photostat copies of 2 cheques (D20A and B) issued in his name and bearing his identity card number for RM14,880 and RM10,230 respectively from Empat Nombor Ekor to show that he had won on his bets on "4 digits". DW5, the manager of Empat Nombor Ekor (Selangor) Sdn. Bhd., confirmed that the 2 cheques were issued in the name of Wong Kiew Meow. That is the name of the accused. I have no difficulty in accepting the evidence that he betted on "4 digits" run by Empat Nombor Ekor and run by illegal syndicates as well.

When the accused was arrested he had RM5,000 cash on his person. He claimed that the RM5,000 were proceeds of his winnings from an illegal gambling syndicate on number 6786. DW5 the manager of Empat Nombor Ekor (Selangor) Sdn. Bhd., confirmed that that number was the first prize number of Magnum draw 5/86 on 11 January 1986. He said Magnum is the parent company of Empat Nombor Ekor (Selangor) Sdn. Bhd. He felt that illegal syndicates base winning numbers on Magnum draws. The accused said he based his winning number - 6786 on a variation of the registration number of his brother's car, WBE 8766.

He said that a week before, on 5 January 1986, this car was involved in an accident. His brother, DW2, confirmed that on midnight of 5 January 1986 (i.e., he meant the early hours of 6 January 1986) while he was on his way from Ipoh to Bidor his car, WBE 8766, met with an accident and was repaired at a workshop. The proprietor of the workshop, DW6, confirmed that he repaired the car. He said he put up the insurance claim for the car with Pacific and Orient Insurance Company Sdn. Bhd., in respect of the car. It is quite common knowledge that inveterate gamblers of 4 digits lotteries bet on the registration numbers of cars which meet with accident and that in addition they juggle the numbers in various combinations. It seems to me that the accused would hardly have passed up the chance to bet on various combinations of his brother's car number after the car met with the accident and that he probably won a prize. It is possible that the RM5,000 found on his person in large denominations of RM50 and RM100 were proceeds from the winnings but I shall touch on this aspect of the evidence later.

As regards the events on the day of his arrest the accused said that on the day of his arrest, which was a Saturday, he left his house at about 9.30 in his car and went to Khong Guan coffee shop. At the coffee shop he met with his friend, Ah Wah. The accused took a newspaper, ordered his drinks and joined Ah Wah at his table. He had a chat with Ah Wah and read his papers. About 20 minutes later his friend, Ah Chye (DW4), the proprietor of the coffee shop, called for Ah Wah to answer a phone call. Ah Wah went over to answer the call and on his return he requested the accused to lend him his car. The accused lent him the car but told him to return early as he intended to go to Genting Highlands to gamble. Ah Wah then told him he too wanted to go to Genting Highlands. The accused said he had lent his car to Ah Wah many times before and he said he used to meet him everytime he went to the coffee shop.

According to the accused, Ah Wah arrived more than half an hour later and he hooted the car horn in front of the shop and signalled the accused to go over to the car. He went up to him and Ah Wah asked him if he was ready to go to Genting Highlands. The accused replied "Yes" and the accused took the driver's seat and drove off with Ah Wah.

According to the accused, then Ah Wah told him that he had a lunch appointment with a bar girl working in Campbell Night club by the name of "Ah Quin". The accused said he knew her as well. Ah Wah invited him to have lunch together with them saying that after the lunch they could proceed to Genting Highlands. And Ah Wah told him he would like to go to his room to get some money. They proceeded towards Wisma Shaw and Ah Wah then told him to "turn in" so that he could go back to his room to get some money. The accused turned his car and stopped in front of a coffee shop at Jalan Nyonya and Ah Wah alighted from the car stating that he would go up to his room to get his money and that he would order the food. Ah Wah told him to park his car and fetch Ah Quin to the coffee shop. The accused said he then drove his car to Jalan Baba, which was nearby, where he parked his car. He then went up to Ah Quin's flat on the first floor. A few steps before reaching the landing on the first floor he saw a man come down and pass him. When he reached the landing he called out "Ah Quin" 3 times and when there was no response he went up to the door with the intention of knocking at the door. As he was about to knock the door he heard someone at a higher lever shout "Oih!" and he saw 2 Malays and one of them beckoned him to go up which he did. The 2 Malays also walked down and one of them showed him a card and said "Polis". That man asked "Cari siapa?" and he answered "Cari Ah Moi!". He said that at that time 2 to 3 persons walked up and one of them took the car key which was in his hand and then went downstairs. The rest then searched his person and took his wallet and RM5,000 cash, they then lowered his trousers up to his thighs

and felt at his underwear. He asked, "Apa hal encik?". He was then brought downstairs with his hands handcuffed. One of them had his hand on his (accused's) shoulders while the rest followed behind. He denied he was reluctant to go downstairs. He said that he asked "Apa hal?" and they turned and stopped momentarily. He said the police searched the car and found drugs and money in the glove compartment. He denied putting them there or knowing about them.

He said he was brought to his house that afternoon and his parents were there. He told his father to ring up his elder sister Wong Siew Lin (DW3) who then came to the house later. He said he told her to go to the coffee shop and ask Ah Chye (DW4) whether he knew where Ah Wah had gone to when he borrowed his car and to find out from him how it was that the police found 2 packages in his car.

The accused also gave evidence that while he was in prison Inspector Saliman (PW6) came to see him alone twice and that Inspector Maarof saw him twice as well, on each occasion with a different person. On the second occasion Inspector Maarof came to see him he showed him 3 photographs and a passport. One photograph was that of Ah Quin and the Inspector asked him where she was, whether she worked at the Campbell nightclub. The other two photographs were those of a man and a woman and he could not recognise them. According to the accused he was shown the passport of Foo Fu Heng (DW8) whom he did not know in 1986.

There were three important persons mentioned in the accused's evidence - Ah Wah, Foo Fu Heng and Ah Quin.

Let me deal with the woman Ah Quin and the man Foo Fu Heng first. That they exist is clear from the prosecution evidence. A woman Ng Siew Keat and Foo Fu Heng were arrested at Gombak the night previous to the day the accused was arrested. Foo Fu Heng stated the same thing and he gave the name of the girl arrested with him as Ah Quin.

In respect of these two being at the flat on the first floor of No. 30, Jalan Baba, the prosecution witnesses denied any knowledge. But it is clear from the prosecution evidence that ASP Mohd. Yusof, Inspector Yusof Tahir, Paiman, Zaharin and some others were involved in the arrest of these two persons shortly before they arrested the accused. The evidence of the landlady of the flat, DW7, was clear that on the morning that the accused was arrested the two persons Ah Quin and Foo were brought to the flat by the police. They went to a room. This was the room next to the landing and which had been rented to both the persons, known to her as Chin Toi Chye (Foo Fu Heng was identified by her as Chin Toi Chye) and Ah Quin. She said she saw the two of them come to her flat with some Malay men at between 10 to 11 a.m. The two entered their room and some of the Malays also entered the room. All of them left the place some 15 to 20 minutes later and she did not know what happened outside the flat. She was unshaken in her evidence during cross-examination.

Foo Fu Heng (DW8) also gave evidence. He said he was also known as Chin Toi Chye. He recounted his arrest in the early morning of 18 January at about 2 a.m. at a house in Sri Gombak. He said Ah Quin, his girl friend, was also arrested with him and in that house were discovered 29 packets of "pak fan" (heroin) in a bath room. His brand new Ford TX3 car with trader's plates was seized and they were all brought back to the 6th floor of a police building arriving there at about 4 a.m. He said that two officers ASP Mohd. Yusof and one "Botak" asked him if he wanted to go home and if he wanted to, "I must cooperate with them." He also said, "They asked me how I could contact my boss." And he said he replied, "By telephone." On being questioned by the police he gave the name of that person as "Ah Wah." The police wanted to know if Ah Wah had a car and he replied he did not know as

Ah Wah changed his cars and according to him, the police told him that if they were successful in arresting "my boss then the 29 packets which were found in the bathroom will be placed in the car and that then they would release him. According to him the upshot of all these was that he made several calls to a telephone number 9854506 or 9854560 until he eventually got through to Ah Wah and told him, "I need the thing urgently." He requested Ah Wah to bring 2 packets of ½ lb. each to his room and stated to him that he would be waiting at Pudu. As a matter of record Jalan Baba is off Jalan Pudu. According to him Ah Wah said he would deliver at 11 a.m. According to Foo the police took him and Ah Quin in his Ford TX3 to Jalan Baba and other police personnel followed in one or two cars. The police took him and Ah Quin to the flat and ASP Mohd. Yusof told him to tell his landlady to go away and mind her business. One officer remained in the flat with him and Ah Quin. Not long after he heard someone calling for Ah Quin - Ah Quin answered and the police officer in the room covered her mouth. Shortly later the police brought them to the police building.

In respect of the arrest of the two at Sri Gombak and the seizure of the Ford TX3 there was no dispute. From the questions put to both the landlady (DW7) and Foo (DW8) by the DPP it appeared clear for the first time that there was no dispute that the police had brought both Foo and Ah Quin to their flat on the very day the accused was arrested but before his arrest. The DPP put questions to Foo that he and Ah Quin were not brought to Jalan Baba in his car and that it was not the same group who arrested them who brought him there. Foo was adamant that they were brought there in his car by ASP Yusof and "Botak" with "Botak" driving his car. It was suggested to him by the DPP that he may have been taken there for the purpose of searching their room and that was done earlier before ASP Yusof set up the ambush for the accused. Foo denied the allegations and said that in fact one officer was guarding them and the door of the room was locked. It will be remembered that the landlady stated that the two came up with the police at 10 or 11 a.m. and the two stayed in their room for 15 to 20 minutes. The evidence of the prosecution was clear that ASP Mohd. Yusof's operation at Jalan Baba which resulted in the accused being arrested was as a result of information received. Notwithstanding the denial of relevant prosecution witnesses it seems clear that there was a link between the arrest of Foo and Ah Quin on the hand and the operation where the accused was arrested on the other as it seems too much of a coincidence that Foo should have been arrested for drugs found in Sri Gombak and that he and Ah Quin should have been brought to the flat at Jalan Baba and the police should be waiting, acting on information, to arrest someone who was to visit the flat.

The question arises as to whether the police were waiting to arrest Ah Wah or the accused? Does "Ah Wah" exist? Is the accused an innocent victim?

The accused said that Ah Wah received a telephone call on the morning of the day of his arrest at Khong Guan coffee shop after which Ah Wah borrowed his car for over ½ hour. The proprietor of Khong Guan, DW4, confirmed that he had a coin operated telephone, number 9854506, in his coffee shop and that one morning he received a call from a person who identified himself as Chin Toi Chye wishing to speak to Ah Wah who was then in the shop. He said Ah Wah then took the call after which he (Ah Wah) borrowed the accused's car. DW4 stated that prior to the call which Ah Wah took, there were a few calls for Ah Wah starting at "8 something" in the morning but Ah Wah was not at the coffee shop then. It will be remembered that Foo stated that he, in order to co-operate with the police to get Ah Wah, had placed a call to telephone number 9854506 or 9854560. This he said was after he had just woken up at the police building. He was told Ah Wah was not there. He and Ah Quin were then brought to the Magistrate's Court at Jalan Duta to be remanded and

when they came back he rang up the number again and was told Ah Wah was not there. He rang up the third time and left his name and a message that he had an urgent message for Ah Wah. He said with the fourth call he managed to get through Ah Wah when he told him to bring 2 packets of 2½ lbs each of the thing to his room and that he would be waiting at Pudu. According to him Ah Wah promised to be there at 11 a.m. ASP Mohd. Yusof had denied that Foo made the calls, while Inspector Yusof Tahir said he did not know about the calls. But it seems to me if the police were out to set a trap at 11 a.m. at Jalan Baba that morning they had to know either through prior information from Foo or some other source that someone was coming there at 11 a.m. or information obtained as a result of Foo co-operating with them to lure someone there at 11 a.m. over the phone. Bearing in mind that Foo and Ah Quin had just been arrested that morning and that they had been brought to the flat by the police the same morning it seems probable that Foo might have cooperated with the police to lure someone there. But was this someone that Foo called over the phone Ah Wah or the accused? Did Foo and the accused while in the prison concoct this character Ah Wah?

It should be borne in mind that the accused was brought to his house on the afternoon of his arrest and that he met his sister DW3 and told her to see the proprietor (DW4) of Khong Guan coffee shop and find out from him where Ah Wah had gone to and to enquire as to how the police found 2 packages in his car. The accused denied he concocted this story. His sister DW3 substantially corroborated his story. She also said that she went to the proprietor (DW4) of Khong Guan to ask him to look for Ah Wah and that she went to the coffee shop several times. DW4 confirmed that DW3 went to see him on her brother's instructions to look for Ah Wah and that she saw him several subsequent occasions on the matter.

Now I turn to the evidence of the accused that Inspector Saliman and Inspector Maarof visited him in prison. It will be remembered that Inspector Saliman, the IO of the case, served the chemist report on the accused and that he agreed with defence Counsel that in the course of his investigations he visited the accused to ask him a question regarding the existence of a woman in the flat though he denied he showed a photograph of the woman to the accused. He said he failed to trace the name of the girl or her address. He also denied that he asked the accused the name of the person who got down from the accused's car and that the accused gave him the name of one Ah Wah and he was asked to check with one Ah Chye at coffee shop Khong Guan. On the other hand through the cross-examination of defence witnesses the prosecution conceded that Ah Quin and Foo were brought to the flat on the day of the accused's arrest and there does appear to be a link between their arrest and their being brought to their flat at Jalan Baba on the one hand and the police operation that day where the accused was arrested on the other. Was it not probable that Inspector Saliman visited the accused to find out more of this woman who he should have already known about and to investigate into the accused's allegations about Ah Wah?

Then there was the accused's allegations that Inspector Maarof visited him twice, once with a Chinese and another time with a Malay. He had no difficulty in picking up Inspector Maarof. He also picked a Chinese officer (Sergeant Lee Cheng Hon) as the one who accompanied Maarof on the first occasion and he said that a Malay officer (ASP Faisal) was probably the other who accompanied Maarof on the second occasion. According to the accused, on the first occasion that Maarof visited him, Maarof, came with a file and told him he was the new investigating officer as "atas tada percaya dia orang" and that he had been directed to take over the investigations; he told the accused to relate the incident that occurred that day. On the second occasion, according to the accused, when Maarof came to see him he showed 3

photographs and a passport to him. One photograph was that of Ah Quin and he was asked where she was and whether she worked at the Campbell nightclub. The other two showed a man and a woman but the accused said he could not recognise who they showed. The passport showed the photograph of Foo (DW8) but he did not know him in 1986. The DPP put to him that Inspector Maarof visited him once with a corporal but the accused denied it. He also denied that Maarof visited him in connection with "something else." The accused's witness, Foo also stated that Inspector Maarof (who he identified) went to prison to question him as well and to show him 3 photographs, one of his girl friend, one of his landlady at Sri Gombak and another of the accused. He also showed Foo his (Foo's) passport. He said that Maarof asked him if he knew the person (the accused) shown in one of the photographs and he said he replied that he did not know. He said that at prison he came to know the accused and that they first discussed the accused's case after Inspector Maarof had come to the prison showing the photographs and it was later that the accused came to know that he (Foo) was connected with his case. According to him the accused had asked him who the girl that was shown in the photograph was and he told him that she was shown in the photograph was and he told him that she was his girl friend and the accused expressed surprise saying something like "Oh, that is your girl friend" and asked him if she worked at Campbell Bar. Then he was asked if he knew Ah Wah and Foo replied that Ah Wah was his boss.

It is possible that the accused and Foo concocted the story about Inspector Maarof showing them photographs bearing in mind that the two were in prison together but it has also to be borne in mind that Foo stated that they did not meet as they were kept in different blocks. Blocks A and B, until recently when all involved in drug cases were kept in Block A.

Bearing in mind too that there does appear to be a connection between Foo's arrest and the accused's arrest within a short space of time and bearing in mind that the prosecution conceded that Foo and Ah Quin were brought to the Jalan Baba flat before the accused's arrest at the landing of the flat, why were not the prosecution witnesses more forthcoming that the case of the accused was connected with the case of Foo? Instead the concessions that there could have been a connection came through cross-examination questions put to defence witnesses. The point is did the police trap and arrest an innocent person? And that was why investigations of Inspector Saliman and Inspector Maarof were carried out later to ferret out the truth?

Before I proceed further I would like to mention one confusing aspect in the prosecution's evidence. Zaharin (PW8) admitted under cross-examination that he saw the interior of the flat with ASP Mohd. Yusof. He said the windows of the flat faced the back. That would have meant that at least he and ASP Mohd. Yusof had gone into the flat contradicting the evidence of ASP Mohd. Yusof. But under re-examination he denied he went to the flat. In the light of the prosecution's concession during the defence that the police brought Foo and Ah Quin to the flat that morning it seems to me that Zaharin's denial cannot be true. It seems to me that Zaharin and Mohd. Yusof were members of the team which visited the house and which carried out the operation where the accused was arrested. Was it true then that a member of the team passed the accused as he walked up the stairs as claimed by the accused? I am unsure of the denials of the relevant prosecution witnesses. Could it be that, as claimed by the accused, Inspector Yusof Tahir took his car key and went down before the police brought the accused down? I am unsure of the denials of the prosecution witnesses - I am unsure of their veracity.

There are many questions that can be asked. And the prosecution's case does not supply the answers. The problem here is that the drugs were found in the car and the prosecution facts tend to show that since the accused alone arrived in his car and that since he himself locked it and that since the drugs were found in the locked car, that a *prima facie* case of custody and control of the drugs was made out against the accused. Did the accused have possession of the drugs? Did he have knowledge of the drugs? Did he traffick in them? But the defence through consistent testimony of the defence witnesses showed that Ah Wah probably exists. Admittedly there were some discrepancies in the defence evidence but there was a cohesiveness of material aspects of the defence evidence which supplemented the prosecution evidence so that a whole picture of what probably transpired between the operation of the police in which the accused was arrested - which was the prosecution's case - and the involvement of Foo, Ah Quin and the police in a scheme to lure Ah Wah into a trap but into which the accused stepped into - which was the defence's story - becomes apparent. The link between the prosecution's version and the defence's version is not improbable bearing in mind that it was only in the defence that questions put in cross-examination conceded that Foo who had been arrested for drug involvement was, together with Ah Quin, brought to the Jalan Baba flat before the accused was arrested at its landing. It could not have been mere coincidence. That Ah Wah exists is also probable bearing in mind the consistent evidence of the accused, the accused's sister (DW3), the proprietor (DW4) of Khong Guan coffee shop and Foo (DW8) relating to Ah Wah. That Ah Wah was probably the culprit who put the drugs in the glove compartment of accused's car after he borrowed the accused's car is also probable bearing in mind, again, the consistent evidence of the accused, DW4 and DW8.

One other matter. Why did the accused bring RM5,000 with him when he went up the stairs and leave RM1,000 cash and drugs in the glove compartment? He said he had RM5,000 in order to gamble at Gentings. He also said the RM5,000 were winnings from his betting a combination of the registration number of his brother's car which was proved to have met with an accident; and the combination number was proved to have won a first prize. Since he took the RM5,000 with him why didn't he take the cash of RM1,000 and the drugs which were in the glove compartment with him to the landing? Unless he did not know of their existence? Conversely if the drugs and the cash were his and he had put them in the glove compartment why did he not put the RM5,000 cash found on him in the glove compartment?

On an assessment of the totality of the evidence adduced in this case it is probable that the accused was an innocent victim of a police trap which misfired. The trap was more probably for a third party who probably exists and who had placed the drugs and money in the glove compartment of the accused's car when he borrowed the accused's car that morning and who had dropped off in Jalan Nyonya before the accused went to nearby Jalan Baba to fetch that man's girl friend. To my mind the presumptions of possession and knowledge of, and the trafficking in, the said heroin, have, on a balance of probabilities, been rebutted. The accused is therefore acquitted and discharged.

I order the forfeiture of the heroin (P4A and P5A) and all their containers and wrappings, cash of RM1,000 (P8A), the car (P12) and car key (P9A). Cash of RM5,000 (P7A) to be returned to Wong Kiew Meow.

Also found at [1989] 1 CLJ 496